

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CRIMINAL MISC.APPLICATION No. 2746 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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STANDARD CHARTERED BANK & 3 - Applicant(s)
Versus
DHARMENDRA AMARSINH HANJARA & 1 - Respondent(s)

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Appearance :

MR CR ABICHANDANI for Applicant(s) : 1 - 4.

MR BC DAVE for Respondent(s) : 1,

PUBLIC PROSECUTOR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 10/08/2007

ORAL JUDGMENT

By way of this application u/s 482 of Criminal Procedure Code, the applicants, - original accused have prayed to quash the complaint and the process issued by the ld. 3rd Joint Civil Judge (JD) & JMFC, Surat passed in

complaint No.185 of 2003 issued for the offence punishable u/s 403, 406, 409, 420, 34, 120-B and 114 of the IPC.

2. A criminal complaint No.185/03 has been filed by the respondent No.1 herein, - original complainant in the Court of ld. 3rd Joint Civil Judge (JD) & JMFC, Surat for the offence punishable u/s 403, 406, 409, 420, 34, 120-B and 114 of the IPC alleging inter alia that the respondent No.1 herein runs an Auto Consultancy business of Car brokerage and he purchased one Opel Corssa car on loan from the petitioner No.1 as per the terms and conditions agreed upon on a Loan-cum-Hypothecation Agreement. It was the case of the respondent No.1 that we are regularly paying the installment and that the said monthly installment was of Rs.17,839 which was to be paid for 36 months. It is further averred in the complaint that the loan advance was of more than Rs.5 lacs and the loan was availed in the month of September 2000. It has been further alleged that the loan was repaid within 14 months and on asking for NOC, the NOC was not given and Rs.33000/- were sought for as outstanding. It is further alleged that the aforesaid amount was paid by the complainant for which a receipt was also given. It is further averred in the complaint that the car had met with an accident and the claim of Rs.2,35,000/- was also deposited in his account for which a receipt was also given. It is further alleged that another Rs.49,920/- was shown to be outstanding for which again a receipt was given. It is further alleged that the NOC was not given and another outstanding of Rs.1 lac was shown to be there in the account as per the allegation in the complaint and therefore, making aforesaid allegation and the averments in the complaint, the impugned complaint came to be filed

and the learned trial Court issued summons against the petitioners, original accused. Being aggrieved by the same, the petitioners herein have preferred the present application under section 482 of Criminal Procedure Code to quash and set aside the process/summons issued by the learned trial Court in the aforesaid complaint.

3. Shri PR Abichandani, learned advocate appearing on behalf of the petitioners has submitted that the dispute which is raised is purely a civil dispute which is converted into a criminal dispute. It is submitted that whatever the amount was received by way of insurance i.e. Rs.2,35,000/- has been given credit as and when the installments were due and as such the said amount of Rs.2,35,000/- was kept in a suspense account and as and when there was a default in the installment, the same was adjusted and given credit. It is submitted that by no stretch of imagination, it can be said that the petitioners have committed any offence as alleged in the complaint. It is further submitted that as certain amount was still due and payable and therefore, the NOC was not given. It is submitted that the entire statement of bank account was furnished to the petitioners which also clearly establishes and confirms the credit given out of Rs.2,35,000/-. It is submitted that if the respondent No.1, - original complainant had any dispute with regard to account, then as such he was required to file a suit for accounts and/or initiate appropriate proceedings before the civil Court. However, considering the above, it cannot be said that the petitioners have committed any offence as alleged in the complaint. It is submitted that when the civil dispute is converted into a criminal dispute and instead of filing a suit, criminal proceedings are initiated, it is nothing but an abuse of

process of law and therefore, it is requested to quash the complaint.

4. Shri BC Dave, learned advocate appearing on behalf of the respondent No.1 herein has relied upon the affidavit-in-reply. It is submitted that as such the petitioners were required to give interest on the aforesaid amount of Rs.2,35,000/- which they have received from the insurance company and that no interest has been awarded on the said amount and the account is defective and according to the respondent No.1 though the entire loan is paid, still with a mala fide intention, the NOC has not been issued and it is nothing but a criminal breach of trust. It is also further submitted that in spite of the fact that the entire loan amount has been paid, still the petitioners have raised a demand and have submitted that still more amount is due and payable. It is submitted that considering the averments in the complaint, it discloses the cognizable offence for which a trial is required and therefore, it is requested not to exercise the powers under section 482 of Criminal Procedure Code and not to quash and set aside the impugned complaint.

5. Shri Mengdey, ld. APP has requested to pass an appropriate order considering the averments in the complaint and the controversy/dispute involved.

6. Heard the learned advocates appearing on behalf of the parties.

7. On considering the averments in the complaint, it appears to the Court that the dispute which has been raised in the complaint is purely of a civil nature and

the basic dispute is with regard to the account. It is the contention of the respondent No.1 that though he has paid the entire loan amount, still some amount is stated to be outstanding and NOC has not been issued and therefore, according to the respondent No.1, it is a criminal breach of trust. On the other hand, it is the contention of the petitioners that the amount of Rs.2,35,000/- received from the insurance company was kept in the suspense account and as and when there was a default in installment, the same was adjusted from the aforesaid amount of Rs.2,35,000/- and is given credit and for which time to time the statement is furnished to the respondent No.1. Even during the pendency of the present proceedings also, the statement of account is given and on considering the same also, it appears that out of the said amount, a credit is given. It is the case of the respondent No.1 that as such the petitioners were required to award the interest on the aforesaid amount of Rs.2,35,000/- which according to the respondent No.1 was kept in suspense account and by not awarding the interest, the outstanding is shown. Now considering the averments in the complaint as stated hereinabove, it is purely a civil dispute for which the respondent No.1 was required to file a suit for account before the civil Court and or initiate any other proceedings before the civil Court. However, it cannot be said that the petitioners have committed the offence as alleged u/s 403, 406, 409, 420, 34, 120-B and 114 of the IPC. It appears to the Court that the civil dispute is converted into a criminal dispute and for which the aforesaid complaint is filed and therefore filing of the criminal complaint and the aforesaid criminal prosecution would be nothing but an abuse of process of law and under the circumstances, the impugned complaint requires to be

quashed and set aside in exercise of powers u/s 482 of Criminal Procedure Code.

8. For the reasons stated above and in the facts and circumstances of the case, the impugned complaint being No.185/03 pending in the Court of ld. 3rd Joint Civil Judge (JD) & JMFC, Surat and the process issued therein are hereby quashed and set aside. Rule made absolute accordingly.

(M.R. Shah, J.)

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